

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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E.I. DU PONT DE NEMOURS  
AND COMPANY,

Plaintiff,

v.

**DECISION AND ORDER**  
05-CV-317S

UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION, and  
JAMES L. BRIGGS,

Defendants.

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1. On April 28, 2005, Plaintiff E.I. Dupont De Nemours and Company (“Dupont”) filed a Summons and Complaint in New York Supreme Court, County of Erie, against the United Steel Workers Union (“Union”) and its business representative, James Briggs (“Briggs”). In its Complaint, Plaintiff seeks the return of photographs depicting the interior of Dupont’s chemical manufacturing facility located in Niagara Falls, New York (“Niagara Site”). The Complaint sets forth three causes of action: misappropriation of trade secrets, return of chattel and conversion.

2. On April 28, 2005, the Honorable Eugene M. Fahey, Supreme Court Justice, granted Dupont’s Order to Show Cause and Temporary Restraining Order, thereby prohibiting Briggs and the Union from disseminating photographs of the Niagara Site. According to Dupont, Justice Fahey set May 6, 2005 as the return date for DuPont’s motion for a preliminary injunction.

3. On May 5, 2005, Defendants removed this case to the United States District Court for the Western District of New York.

4. On May 11, 2005, Dupont requested an expedited hearing on its Motion to Remand. In addition, Dupont requested an extension of the Temporary Restraining Order granted by Justice Fahey pending resolution of its motion to remand this matter to state court. In Dupont's estimation, the Temporary Restraining Order issued by the state court would expire on May 19, 2005, or ten days after removal of this action to federal court, excluding weekends and holidays.

5. On May 11, 2005, this Court referred this case to the Honorable Hugh B. Scott, United States Magistrate Judge, for all pretrial matters pursuant to 28 U.S.C. § 636(b)(1). Accordingly, Judge Scott granted Dupont's request for an expedited hearing on its Motion to Remand on May 12, 2005, and set an accelerated briefing schedule. Having reviewed the parties' submissions, Judge Scott issued a Decision and Order on May 19, 2005, denying Dupont's Motion to Remand this action to state court. Specifically, he held that "[t]he determination of the Union's right to possess pictures of dangerous work conditions is inextricably intertwined with its rights and duties under the [collective bargaining agreement] to represent its members and negotiate with Dupont as to health and safety issues at the Niagara site." (Docket No. 26, p. 12). Because an analysis of the collective bargaining agreement is necessary to resolve this case, Judge Scott concluded, Dupont's state law claims are preempted by section 301 of the Labor Management Relations Act, codified at 29 U.S.C. § 185. As such, removal of this case to federal court was proper.

6. As previously noted herein, Dupont has also requested an extension of the Temporary Restraining Order issued by the state court pending resolution of its Motion to Remand. However, Judge Scott's expeditious determination of Dupont's Motion to Remand prior to the estimated expiration of Judge Fahey's Temporary Restraining Order,

renders moot Dupont's request for an extension.

IT HEREBY IS ORDERED, that Plaintiff's Motion to Extend the Temporary Restraining Order issued by the state court (Docket No. 6) is DENIED as moot.

SO ORDERED.

Dated: May 23, 2005  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge